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Agenda item 76 (a)
Oceans and the law of the sea

Letter dated 22 August 2014 from the Permanent Representative of Viet Nam to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to transmit herewith a position paper of the Socialist Republic of Viet Nam concerning China's illegal placement of the *Haiyang Shiyou 981* oil rig in the exclusive economic zone and on the continental shelf of Viet Nam (see annex).

I would be grateful if you would circulate the present letter and the annex thereto as an official document of the General Assembly, under agenda item 76 (a).

(*Signed*) Mr. Le Hoai Trung
Ambassador Extraordinary and Plenipotentiary
Permanent Representative to the United Nations

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Annex to the letter dated 22 August 2014 from the Permanent Representative of Viet Nam to the United Nations addressed to the Secretary-General

China's illegal placement of the *Haiyang Shiyou 981* oil rig in the exclusive economic zone and continental shelf of Viet Nam

Concerning China's illegal placement of the *Haiyang Shiyou 981* oil rig in the exclusive economic zone and on the continental shelf of Viet Nam, the position of Viet Nam was clearly set forth in the document attached to the letter dated 3 July 2014 addressed to the Secretary-General of the United Nations by the Permanent Representative of the Socialist Republic of Viet Nam (A/68/943).

Viet Nam rejects the statements contained in the document attached to the letter dated 24 July 2014 addressed to the Secretary-General by the Permanent Representative of the People's Republic of China (A/68/956) referring to the operations of the *Haiyang Shiyou 981* oil rig, and emphasizes the following points:

1. The placement by China of the *Haiyang Shiyou 981* oil rig from 2 May to 15 July 2014 infringed upon Viet Nam's jurisdiction and sovereign rights in its exclusive economic zone and on its continental shelf, as defined in relation to the coast of Viet Nam under the 1982 United Nations Convention on the Law of the Sea. In any event, whatever the principle applied for the purpose of boundary demarcation, the area where the Chinese oil rig operated could never be within the exclusive economic zone or on the continental shelf of China.

2. The baseline used by China to measure the territorial waters of the Hoang Sa (Paracel) islands of Viet Nam fails to comply with the relevant provisions of the 1982 United Nations Convention on the Law of the Sea, to which China is a party. That baseline has therefore been rejected not only by Viet Nam but also by other States. Viet Nam's position was clearly set forth in the note of 6 June 1996 addressed to the United Nations.

3. A baseline incompatible with international law cannot be used as the basis for a maritime claim in a futile attempt to justify the illegal placement of the *Haiyang Shiyou 981* oil rig within the exclusive economic zone and on the continental shelf of Viet Nam.

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Letter dated 22 August 2014 from the Permanent Representative of Viet Nam to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to transmit herewith a position paper of the Socialist Republic of Viet Nam concerning the sovereignty of Viet Nam over the Hoang Sa archipelago (see annex).

I would be grateful if you would circulate the present letter and the annex thereto as an official document of the General Assembly, under agenda item 76 (a).

(*Signed*) **Le** Hoai Trung
Ambassador Extraordinary and Plenipotentiary
Permanent Representative to the United Nations

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Annex to the letter dated 22 August 2014 from the Permanent Representative of Viet Nam to the United Nations addressed to the Secretary-General

Sovereignty of Viet Nam over the Hoang Sa islands

The position of Viet Nam regarding the issue of sovereignty over the Hoang Sa (Paracel) islands was clearly set forth in the document annexed to the letter of 3 July 2014 addressed to the Secretary-General of the United Nations by the Permanent Representative of the Socialist Republic of Viet Nam (A/68/942).

The arguments advanced by China in the document annexed to the letter of 24 July 2014 addressed to the Secretary-General of the United Nations by the Permanent Representative of the People's Republic of China to the United Nations (A/68/956) are completely devoid of historical and legal foundation. Viet Nam rejects those arguments and emphasizes the following points:

1. The Hoang Sa islands have been a part of Vietnamese territory for several centuries. Starting in the seventeenth century, Viet Nam established its sovereignty over the islands by means of actual administrative acts that fulfilled the requirements of international law at that time. Furthermore, China never challenged Viet Nam's exercise of its sovereignty over the Hoang Sa islands until the twentieth century.

2. The claim that the Hoang Sa islands had been under Chinese jurisdiction since the Northern Song dynasty is incompatible with the historical facts since nothing in the official historical and geographical annals of the Song dynasty supports that allegation. The Songshi geography book (the annals of Song history) clearly show that the southernmost boundary of Song China was Qiong Ya (the former name of Hainan island). Many other contemporary maps (such as the "Jiuyu Shoulingtu" map of 1121, discovered in Sichuan province in 1960) similarly show that the southernmost point in China was Qiong Ya (Hainan). The same applies to numerous later maps up to the first half of the twentieth century.

3. During the colonial period, France, acting in the name of Viet Nam, exercised effective sovereignty over the Hoang Sa islands. France was never "recognizant of" and never "acquiesced to" China's claim of sovereignty. The colonial documents cited in the Chinese document are merely internal correspondence between French officials and never led to the communication of an official stance to China. In fact, France even took possession of the Hoang Sa (Paracel) islands and included them for administrative purposes in Thua Thien province in 1938.

Exchanges of diplomatic notes between France and China in the 1930s clearly show that there was, from that time, a de jure and a de facto disagreement, a conflict of legal views concerning sovereignty over the Hoang Sa islands. France twice (in 1937 and 1947) invited China to settle the dispute by appealing to an international jurisdiction, but the Chinese authorities refused to do so.

4. The issue of sovereignty over the Hoang Sa islands (or for that matter the Truong Sa (Spratly) islands) is not mentioned in the 1943 Cairo Declaration, the 1945 Potsdam Proclamation or the 1945 Japanese Instrument of Surrender. The Chinese claim that sovereignty over the islands was "returned" to China at the end of the Second World War is thus also completely without foundation. Indeed, at the

1951 San Francisco conference, which preceded the signing of a peace treaty with Japan, the States in attendance explicitly rejected a proposal to hand the Hoang Sa (and Truong Sa) islands over to China. This episode clearly demonstrates that the international community has never recognized China's claims to sovereignty over these two island groups. That explicit rejection stands in stark contrast to the absence of any opposition to the statement made by the Prime Minister of the State of Viet Nam on 7 September 1951 at the same San Francisco conference, in which the Prime Minister asserted Viet Nam's rights to the Hoang Sa and Truong Sa islands.

5. During the years of partition of Viet Nam, and in accordance with the 1954 Geneva Agreement on the Cessation of Hostilities in Viet Nam, the Hoang Sa and Truong Sa islands, which lie south of the demarcation line, were under the exclusive authority of the Republic of Viet Nam, which did effectively exercise its sovereignty over them and carried out various administrative actions on those territories. Regardless of how it should be interpreted, the letter from the representative of the Democratic Republic of Viet Nam, referred to in the Chinese document, is therefore devoid of legal consequences since the island groups were not under the territorial authority of the Democratic Republic of Viet Nam.

6. The military operation conducted by China in January 1974 for the purpose of taking possession of the Hoang Sa islands by force cannot be justified by invoking self-defence. The Republic of Viet Nam peacefully governed the islands at that time and was forcibly driven out by the army of the People's Republic of China. Chinese claims of sovereignty over the Hoang Sa islands do not change the fact that the use of force was a violation of international law and contrary to the principle of the peaceful settlement of international disputes.

7. Denying that there is a dispute between Viet Nam and China regarding sovereignty over the Hoang Sa islands amounts to denying the obvious. Indeed, the existence of the dispute was explicitly acknowledged by Vice-Premier Deng Xiaoping in 1975, and put down in writing in a memorandum from the Chinese Ministry of Foreign Affairs in 1988.

8. Given that China cannot, in good faith, deny that there is a dispute with Viet Nam on this issue, Viet Nam expects China to join it in abiding by the principle of the peaceful settlement of international disputes and seeking a settlement not through peremptory assertions or intimidatory acts but by peaceful means, a principle that China, like all other Member States of the United Nations, has accepted.